IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.16479 of 2006
Date of decision: 30.11.2006

M/s Parvesh Steels, Mandi Gobindgarh.

---Petitioner.

Vs.

State of Punjab and others.

-----Respondents.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. Baldev Sharma, Advocate
for the petitioner.

Ms. Urvashi Dhugga, AAG, Punjab.

ORDER:

This petition seeks direction for refund of the amount of tax with interest.

The case of the petitioner is that it is a dealer registered under the provisions of the Punjab General Sales Tax Act, 1948 (for short, "the Act"). The petitioner sent iron scrap, which was detained at the Check Post under Section 14-B (4) of the Act and penalty of Rs.18,000/- was imposed for the alleged attempt of evasion.

On appeal, levy of penalty imposed vide order dated 30.05.1994 (Annexure P-1), was set-aside vide order dated 29.09.1999 (Annexure P-2), on the ground that the order of imposition of penalty was a non-speaking one and the matter should be decided afresh after giving opportunity to the assessee and examining the evidence. It was noticed that the State representative had no objection in adopting such a course.

Case of the petitioner is that in spite of the order of remanding the matter, while setting aside the order of imposition of penalty, no decision had been taken, nor the amount of penalty, which was deposited, was being refunded with

interest as statutorily required, even though the petitioner had made several applications for the purpose.

In the reply filed, stand taken is that no refund can be claimed unless an application is made for the purpose, within three years from the date the amount becomes due.

We have heard learned counsel for the parties and perused the record.

It has not been disputed that imposition of penalty of Rs.18,000/- was set-aside on appeal and the matter was remanded and no demand stands against the petitioner as on today.

Refund having allegedly accrued to the petitioner, it is difficult to accept the stand taken on behalf of the respondents that application (Annexure P-3) for refund was never received. State is expected to act fairly and should not illegally retain the amount of penalty involved, which is not due. It is not a case of unjust enrichment. Penalty was held to have been imposed without any speaking order and without consideration of the case of the petitioner. Inspite of order of remand having been passed, in the year 1999, no fresh order has been shown to have been passed. The amount was, thus, liable to be refunded to the petitioner with statutory interest.

In view of above, the petition is allowed and direction is issued to refund the amount of penalty with statutory interest within a period of two months from the date of receipt of a certified copy of this order.

It is made clear that if any fresh order is passed in the meantime, the respondents will be at liberty to make necessary adjustment.

(ADARSH KUMAR GOEL)
JUDGE

November 30, 2006 **(RAJESH BINDAL)**
ashwani **JUDGE**